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EXAMINER
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LAstra, DANIEL

ART UNIT	PAPER NUMBER
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3688

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/834,500	<b>Applicant(s)</b> CRISTOFALO ET AL.	
	<b>Examiner</b> DANIEL LASTRA	<b>Art Unit</b> 3688	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10/15/2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-16, 26-34, 52-65 and 198 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16, 26-34, 52-65 and 198 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

1. Claims 1-16, 26-34, 52-65 and 198 have been examined. Application 09/834,500 (SYSTEM AND METHOD FOR TARGETING OBJECT ORIENTED AUDIO AND VIDEO CONTENT TO USERS) has a filing date 04/12/2001.

### **Response to Amendment**

2. In response to Non Final Rejection filed 07/17/2008, the Applicant filed a Request for reconsideration on 10/15/2008.

### **Claim Rejections - 35 USC § 101**

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 52 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Based on Supreme Court precedent, a method/process claim must (1) be tied to another statutory class of invention (such as a particular apparatus) (see at least *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876)) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing (see at least *Gottschalk v. Benson*, 409 U.S. 63, 71 (1972)). A method/process claim that fails to meet one of the above requirements is not in compliance with the statutory requirements of 35 U.S.C. 101 for patent eligible subject matter. Here the claims fails to meet the above requirements because the steps are neither tied to another statutory class of invention (such as a particular apparatus).

**Claim Rejections - 35 USC § 102**

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-16, 26-34, 52-57, 61-65 and 198 are rejected under 35 U.S.C. 102(e) as being anticipated by Flickinger (US 2005/0210502).

As per claims 1 and 52, Flickering teaches:

A system for transmitting a program containing content including a plurality of media objects, wherein a portion of the plurality of media objects is targeted to at least two user audiences, comprising:

a source of the plurality of media objects, the plurality of media objects including a plurality of background media objects (i.e. “portions of a screen during actual programming” paragraph 41) and a plurality of targeted media objects (see paragraph 41 “ads”); and

a transmitting system in communication with the source of the plurality of media objects, the transmitting system configured to transmit a programming signal that comprises, a portion of the plurality of background media objects to be presented at an

Art Unit: 3688

instance in the program to the at least two user audiences, and a portion of the plurality of targeted media objects to be presented at the instance in the program, the portion of the plurality of targeted media objects including a first media object to be targeted to a first user audience and a second media object to be targeted to a second user audience (see paragraphs 41, 42, 64). Flickering teaches selecting ads to insert into a portion of a screen (i.e. background images) during an actual programming, where said ads are targeted (i.e. “targeted media objects”) based upon user’s profile and where different ads may be maintained for each potential subscriber at the subscriber location (i.e. “mother, father, child”; see paragraph 64; “the father would be targeted with a different ad than the child or the mother”).

As per claims 2, 29, 62, Flickering teaches:

wherein the at least two user audiences are based on a plurality of user profiles, each user profile is based upon information selected from the group consisting of: response by a user to a survey, demographic information, user viewing habits, selection of a media object by a user during a programming signal, purchase behavior, a compilation of viewing habits from at least two users, statistical information, and regional information (see paragraphs 55, 64).

As per claim 3, Flickering teaches:

wherein the user profile is generated by a user profiling system located with the transmitting system (see paragraph 58).

As per claims 4, 30, 53, Flickering teaches:

Art Unit: 3688

wherein the programming signal further comprises a signal in a form selected from the group consisting of: a video signal, an audio signal, a combined audio and video signal, animation, text, graphics, multimedia, slow frame video, video stills, sequence of individual frames, virtual reality, live, pre-recorded, natural, synthetic, combined natural and synthetic, and computer generated content (see paragraph 30).

As per claim 5, Flickering teaches:

wherein the programming signal is transmitted by the transmitting system to a receiving system via a transmission medium selected from the group consisting of: broadcast, microwave, millimeter wave, wireless, wireline, satellite, cable, and fiber optics (see paragraphs 29-30).

As per claims 6, 31 and 55, Flickering teaches:

wherein the plurality of media objects is received by an input port in communication with the transmitting system over a transmission medium selected from the group consisting of: broadcast, wireless, wireline, microwave, millimeter wave, satellite, cable, and fiber optics (see paragraphs 29-30).

As per claim 7, Flickering teaches:

wherein the transmitting system further comprises a wireless system selected from the group consisting of: television broadcasting system, radio broadcasting system, microwave systems, millimeter wave systems, infrared systems, wireless telecommunications system, and a satellite broadcasting system (see paragraphs 28-31).

As per claim 8, Flickering teaches:

Art Unit: 3688

wherein the transmitting system further comprises a wired system utilizing a communications medium selected from the group consisting of: cable, coaxial cable, twisted pair cable, fiber-optic cable, telephone cable, and closed circuit cable (see paragraph 31).

As per claims 9, 32, 65, Flickering teaches:

wherein an input port in communication with the transmitting system receives the plurality of media objects via a stand-alone system from a data storage medium selected from the group consisting of: compact disc, digital versatile disc, video tape, gaming cartridge, memory stick, magnetic storage medium, optical storage medium, Flash memory, random access memory, and read only memory (see paragraph 34).

As per claim 10, Flickering teaches:

wherein the transmitting system transmits the programming signal via at least one network selected from the group consisting of: the Internet, intranet, private network, wired network, ATM network, wireless network, wide area network, local area network, and a public network (see paragraph 34).

As per claim 11, Flickering teaches:

wherein the programming signal is streamed over the network (see paragraph 34).

As per claims 12, 27, 54, Flickering teaches:

wherein the plurality of media objects is transmitted in a format selected from the group consisting of: MPEG-1, MPEG-2, MPEG-4, MPEG-7, JPEG, motion JPEG, GIFs, Quicktime, ActiveMovie, DVI, and Indeo (see paragraph 34).

As per claim 13, Flickering teaches:

wherein the transmitting system utilizes a transmission protocol selected from the group consisting of: RTP, UDP, TCP/IP, and ATM to transmit the programming signal (see paragraph 34).

As per claims 14, 33, 56 and 76, Flickering teaches:

wherein the programming signal includes at least one media object containing content related to at least one program type selected from the group consisting of: news program, sports program, virtual reality program, entertainment program, music video, game show program, motion picture program, video program, live program, audio program, polling question, educational program, non-commercial program, and a pre-recorded program (see paragraph 41).

As per claims 15, 34, 57, Flickering teaches:

wherein the programming signal includes at least one media object containing advertising related content (see paragraph 41).

As per claim 16, Flickering teaches:

wherein the transmitting system receives the first media object and the second media object from an input port in communication with the transmitting system, combines the first media object and the second media object into a composite programming signal and transmits the composite programming signal, whereupon receiving the composite programming signal a receiving system selects one of the first media object and the second media object based upon a user profile (see paragraph 41).



As per claim 26, Flickering teaches:

A system for transmitting a program containing content including a plurality of media objects, wherein a portion of the plurality of media objects is targeted to at least two user audiences, comprising:

a source of the plurality of media objects, the plurality of media objects including a plurality of background media objects (i.e. “portions of a screen during actual programming” paragraph 41) and a plurality of targeted media objects (see paragraph 41 “ads”);

a transmitting system in communication with the source of the plurality of media objects, the transmitting system configured to transmit a programming signal that comprises, a portion of the plurality of background media objects to be presented at an instance in the program to the at least two user audiences (see paragraph 41-42), and

a portion of the plurality of targeted media objects to be presented at the instance in the program, the portion of the plurality of targeted media objects including a first media object to be targeted to a first user audience and a second media object to be targeted to a second user audience (see paragraphs 41-42); and

a receiving system in communication with the transmitting system, the receiving system configured to:

receive the programming signal (see paragraph 41);

select at least one of the first media object targeted to the first user audience or the second media object targeted to the second user audience from the programming signal based on a user profile (see paragraph 64); and

output the portion of the plurality of background media objects and the at least one of the first media object or the second media object to a presentation system (see paragraph 41). Flickering teaches selecting ads to insert into a portion of a screen (i.e. background images) during an actual programming, where said ads are targeted (i.e. “targeted media objects”) based upon user’s profile and where different ads may be maintained for each potential subscriber at the subscriber location (i.e. “mother, father, child”; see paragraph 64; “the father would be targeted with a different ad than the child or the mother”).

As per claim 28, Flickering teaches:

wherein the first media object and the second media object both contain content targeted to a first user profile (see paragraph 64).

As per claim 61, Flickering teaches:

wherein the identifying of at least one of the first user profile or the second user profile further comprises:

obtaining user information; and compiling the user information into the at least one of the first user profile or the second user profile (see paragraph 64).

As per claim 63, Flickering teaches:

wherein the identifying of the at least one of the first user profile or the second user profile is accomplished by a receiving system (see paragraph 64).

As per claim 64, Flickering teaches:

wherein the method further comprises storing the plurality of media objects in a data storage device and retrieving the plurality of media objects from the data storage

Art Unit: 3688

device at a designated time for transmitting the plurality of media objects in the programming signal (see paragraph 66)

As per claim 198, Flickering teaches:

wherein whereupon receipt of the programming signal, the portion of the plurality of background media objects and the at least one of the first media object or the second media object being presented to a user audience associated with the at least one of the first user profile or the second user profile (see paragraph 64).

5. Claims 58-60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flickering (US 2005/0210502) in view of Olivier (U.S. 6,480,885).

As per claims 58-60, Flickering fails to teach:

establishing a chat interface between a user and a system transmitting the programming signal, wherein the chat interface utilizes at least one media object from the plurality of media objects to facilitate communications. However, Olivier teaches a system that allows users to be targeted with customized messages via e-mail, chat or instant messaging based upon the users' profiles (see column 3, lines 5-32). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Flickering would use the Olivier system to target messages to users based upon the users' profiles. This feature would allow users of the Picco system to select the messages that the users would like to receive.

### ***Response to Arguments***

6. Applicant's arguments filed 10/15/2008 have been fully considered but they are not persuasive. The Applicant argues that claim 52 is statutory. The Examiner answers

Art Unit: 3688

that the Applicant needs to add some structure (i.e. apparatus) to the claim to make statutory. For example, by simply reciting "transmitting a programming signal using a computer processor" or something similar would overcome the rejection.

The Applicant argues that Flickinger does not teach Applicant's claimed invention, because according to the Applicant, the advertisements disclosed in Flickinger, are received sequentially and multiple advertisements are not and cannot, according to the Applicant, be viewed together at the same time. The Applicant argues that for example, an advertisement intended for a mother cannot be inserted together with another advertisement intended for a father at the same interval. The Examiner answers that the Applicant is arguing about limitation not stated in the claims or specification. Applicant's claimed invention as recited by Applicant's specification simply disclose a system where a plurality of media objects are transmitted to a receiving device, where said receiver device determine which objects from the plurality of object to display to said user based upon said user's profiles (see Applicant's specification page 19, line 22 - page 20, line 17, page 21, lines 15-20). Nowhere, in Applicant's specification or claims is recited that multiple advertisements are viewed together at the same time or that for example, advertisements intended for a mother can be inserted together with another advertisement intended for a father. Flickinger teaches transmitting multiple media objects (i.e. ads) to a user station and selecting in said user end station which media objects (i.e. ad) from a plurality of media objects to display to said user based upon said user's profile (see paragraph 64). Therefore, contrary to Applicant's argument, Flickinger teaches Applicant's claimed invention.

***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL LASTRA whose telephone number is 571-272-6720 and fax 571-273-6720. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James W. Myhre can be reached on (571)272-6722. The official Fax number is 571-273-8300.

Art Unit: 3688

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Raquel Alvarez/  
Primary Examiner, Art Unit 3688

/DANIEL LASTRA/  
Examiner, Art Unit 3688  
December 25, 2008